

REMARKS

The last Office Action of October 9, 2009 has been carefully considered. Continued Examination under 37 CFR 1.114 is hereby requested.

Claims 16-31 are pending in the application. Claims 26-30 have been withdrawn from further consideration due to an earlier election/restriction requirement. Claim 16 has been amended by incorporating the subject matter from claims 17, 18 and 31, which have been canceled. In addition, claim 16 now recited that the can body has an integrally formed bottom, which is supported in paragraphs [0025], [0036], [0037], [0042] and [0048] of the published application, which clearly state that the can of the invention is deep-drawn from a pellet or blank. The bottom 12 is also clearly shown in FIGS. 1 and 2. Claims 19-20 have been amended to provide proper antecedent basis and to improve clarity.

CLAIM OBJECTIONS

Claim 18 is objected to for certain informalities, which have been addressed by amendments to claim 18. Withdrawal of this objection is therefore respectfully requested.

CLAIM REJECTIONS - 35 USC § 112

Claims 19 and 20 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These rejections have been addressed by amendments to claims 19 and 20. Withdrawal of these rejections is therefore respectfully requested.

CLAIM REJECTIONS - 35 U.S.C. §102(b)

Claims 16-24 and 31 are rejected under 35 U.S.C. §102(b) as being anticipated by Frankenberg (US Patent # 3,759,203).

The rejection under 35 U.S.C. §102(b) is respectfully traversed in view of the following remarks.

The present invention, set forth in amended claim 16, is directed to a spray can having a can body made of metal and defining an axial direction and a circumference. The can has a V-shaped configuration extending over most of its axial height and a substantially constant wall thickness along its circumference and along substantially its entire axial height. The can body has a lower can portion with an integrally formed bottom and a substantially circular cross section, and an upper can portion having a shaped region with a shoulder area. The shoulder area has a collared can opening for insertion of a spraying system. The upper can portion has a non-circular cross section. The can body has a substantially constant wall thickness both along its circumference and its axial height, and a circumferential length of the lower can portion is equal in size to a circumferential length of the shaped region.

Frankenberg discloses an apparatus for reforming a cylindrical can body to a generally rectangular body. As disclosed by Frankenberg, an initially circular can body, which is distinguished from the present invention does not include an integral the bottom, is clamped into a clamping device at several locations and then deformed from the inside. This process produces a cylindrical sleeve of rectangular configuration with rounded edges. As seen in FIGS. 4 and 6, the circumferential length of the approximately rectangular sleeve is the significantly greater than the circumferential length of the circular sleeve. This is to be expected mathematically because, as illustrated in figures 4 and 6, the original the diameter is kept constant in the horizontal and vertical directions, whereas the diameter is expanded diagonally. The circumferential length of the resulting rectangle (figures 5-7). During this process, the wall of the can is stretched and hence the wall thickness decreases. The fact that Frankenberg's process

involves stretching of the can body is disclosed, for example, in the Abstract, line 4; column 1, line 47; column 4, lines 28, 43, 49, and 53.

Conversely, the present application states clearly, for example, in paragraph [0008] that in addition to ergonomic considerations, for example to reduce slipping of the spray during its use, particularly when actuating the spraying system with slippery fingers, the spray advantageously has a substantially constant wall thickness about the circumference of the cross section and along its height (longitudinal extent), i.e. the wall thickness is constant in the radial and axial extents. This above all ensures a high level of safety for filled spray cans which are under high pressure. In addition, Frankenberg fails to disclose that ergonomically advantageous V-shaped form of the spray can.

The Examiner's assertion that Frankenberg discloses a can body of substantially constant wall thickness about a circumference thereof and along a height thereof is therefore clearly in error.

For the reasons set forth above, it is applicant's contention that Frankenberg neither teaches nor suggests the features of the present invention, as recited in amended claim 16.

Withdrawal of the rejection under 35 U.S.C. §102(b) is thus respectfully requested.

CLAIM REJECTIONS - 35 U.S.C. §103(a)

Claim 25 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Frankenberg in view of U.S. Pat. No. 6,907,653 to Chupak.

The rejection under 35 U.S.C. §103(a) is respectfully traversed in view of the following remarks.

Chupak was applied to show that cans can be made from aluminum for packaging liquids. However, Chupak does not disclose any other features recited in amended claim 16 that are not disclosed by Frankenberg.

Claim 25 which depend from claim 16 and therefore contains all the limitations thereof, thus patentably distinguishes over the applied prior art in the same manner as claim 16.

Withdrawal of the rejection under 35 U.S.C. §103(a) is thus respectfully requested.

CONCLUSION

In view of the above presented remarks and amendments, it is respectfully submitted that all claims on file should be considered patentably differentiated over the art and should be allowed.

Reconsideration and allowance of the present application are respectfully requested.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully requested that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. If the Examiner feels that it might be helpful in advancing this case by calling the undersigned, applicant would greatly appreciate such a telephone interview.

Respectfully submitted,

By: 

Henry M. Feiereisen
Agent For Applicant
Reg. No: 31,084

Date: February 8, 2010
708 Third Avenue, Suite 1501
New York, N.Y. 10017
(212)244-5500
HMF/WS:af